

Claims Objections:**Claim rejections - 35 USC § 102 - Anticipation (Previous Rejection)**

Claims 37-40, 43, 44 and 46 stand rejected under 35 USC 102 as unpatentable over Ojima et al. (US 7,029,717).

Claims 37, 39-40 have been amended. Claims 38, 44 and 46 have been cancelled and new claim 57 has been added.

At Example 17 of '717, a ratio of 95 to 5, sucralose to methionine is given. This percentage of sucralose when compared to the amino acid is 1,900%, and is not even closely comparable to Applicant's claimed composition. No basis for rejection is present in '717 as in the present application, the claims are limited to a maximum of 15% sucralose when compared to the amino acid component. The other amino acids in '717, arginine and glutamic acid, are not claimed by Applicant as a composition as well. Applicant has shown that arginine cannot be taste masked by sucralose in the levels and compositions far removed from those of '717.

It should be noted that one skilled in the art would immediately recognize that a compound which is present in 1900% excess would give no indication as to the effect in the amounts claimed by Applicants. A person skilled in the art would simply draw the conclusion that the dilution effect would negate any finding of usefulness. Further, the compositions are so vastly different that no suggestion of the rewritten claims and their composition, most especially being drawn to a subset of the amino acids, i.e., the essential amino acids and to a vastly different ratio of amino acids to sucralose present different compositions. Applicant has limited the composition to those that differ significantly from '717 and submits that '717 does not form a basis for rejection for a composition that is so different from Applicant's current claims.

Applicant requests the Examiner withdraw this objection to the present claims based on the narrowing of the scope of the claims and Applicant's arguments in support thereof.

2) Claims 44, 46, 54 and 56 stand rejected under 35 USC 102 as anticipated by Liu et al (US 6,773,730).

Claims 44- 46 and 54-56 drawn to a protein hydrolysate composition have been cancelled, Claim 45 having been previously cancelled.

Claim rejections - 35 USC § 102 - Anticipation (New Rejection)

Claims 37-44, 46-54 and 56 stand rejected under 35 USC 102 as anticipated by Inoue et al (US 7,229,658).

Applicant has amended claims 37, 39, 47-49. Applicant has cancelled claims 38, 40-41, 44, 46, 50-51, 54 and 56.

Examiner cites '658 discloses sucralose as a masking agent for foods comprising proteins (col 20, lines 5-20) and protein hydrolysates (col 23, lines 10-20). Applicant notes that the levels of sucralose suggested by '658 are from 0.0001 to 0.01% by weight. Applicant has compositions and methods which are ten fold different than the highest levels cited by '658 in his redrawn claims. The range in Amended Claim 37 is 3.9% which is significantly higher than the upper range of the composition limit of 0.5% described in '658. Dependent claim 38 is now redundant and has been cancelled as well. Claim 40, drawn to a limited composition has been incorporated into Amended Claim 37 and is now redundant and likewise cancelled.

Applicant has cancelled claims 54 and 56 relating to proteins.

Applicant has used 3.69 % as an effective level of the sucralose in the amino acid composition (Example 3) which is significantly greater than the higher limit anticipated by '658 of 0.5%. Applicant has amended the lower limit to this effective concentration in Claims 37 and 39 and 47-49.

Inoue et al.'s assertion that sucralose is effective in reducing the bad taste of "the amino acids" is untrue as demonstrated by Applicant. Applicant has clearly demonstrated that one skilled in the art, upon testing whether the bad taste of the amino acids was masked by sucralose, would not find a level at which L-arginine, would be taste masked by sucralose. Applicant has shown that L-arginine, which has a bad fishy aftertaste (0036 and Table 1), when mixed with sucralose at 9%, either as the free base or as its hydrochloride salt continues to have the same bad fishy aftertaste; thus, at least one of the amino acids is not taste masked by sucralose and Inoue et al. is proven to be incorrect. Therefore, one could not rely on Inoue et al. as no experimental evidence is presented to demonstrate taste masking of "the amino acids." The



evidence shows that no general principle for taste masking the “amino acids” exists, but rather each of the individual amino acids must be tested to determine whether sucralose will mask the taste. Inoue et al. do not reveal effective levels of sucralose and “amino acids” as clearly shown by Applicant. Further, the levels of composition shown by Inoue et al. are clearly not indicative of the compositions suggested by Applicant. Applicant has redrawn his claims to reflect the levels of sucralose required for effectiveness as well as to clearly define the amino acids components for which the sucralose is effective.

Claim rejections - 35 USC § 103 - Obviousness (Previous Rejection)

Claim 42 was rejected under 35 USC § 103 as being unpatentable over Ojima et al. (US 7,029,717) in view of Newshome et al. (US 5,639,731).

Applicant has now amended Claim 37, on which claim 42 was dependent to reflect a limited composition that is significantly and vastly different from that of Ojima et al.

CONCLUSION

For all the reasons given above, Applicant respectfully submits that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore they submit that this application is now in full condition for allowance, which action Applicants respectfully solicit.

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8

Pursuant to 37 C.F.R. §1.8, I hereby certify that I have a reasonable basis to expect that this correspondence will be deposited with the United States Postal Service on or before the dated indicated, as Express Mail EO 957 051 888 US in an envelope addressed to Commissioner of Patents and Trademarks, P.O. Box 1450 Alexandria, VA 22313-1450

February 4, 2009

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